

ADVISORY OPINION 2002-009

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

December 19, 2002

Ms. Debbie Robbins
Vice President, Programs
The Lincoln Club of Kentucky PAC
1479 Sable Wing Circle
Louisville, Kentucky 40223

Dear Ms. Robbins:

This is in reference to your letters dated October 13, 2002 and November 18, 2002 requesting an advisory opinion regarding an alleged corporate contribution received by your organization, the Lincoln Club of Kentucky PAC ("Lincoln Club"). As your letter explains, the Lincoln Club is a registered permanent committee that hosts an annual Lincoln Day Dinner for Jefferson County. Although the purpose of the dinner is to raise funds to support individual candidates for elected office, the Lincoln Club has not actually disbursed funds to candidates in several years.

In order to raise additional funds in conjunction with this year's February 8, 2002 event, the Lincoln Club made arrangements with Woodmere China, Inc., a Pennsylvania corporation, to sell collectible Presidential China to those who attended the event. The sales transactions were made directly between the purchasers and Woodmere China via written order forms. The Lincoln Club sent the orders, along with the purchasers' payments by cash, check or credit card, to Woodmere China. Upon processing the orders, Woodmere China sent the Lincoln Club a check in the amount of \$974.10, representing fifteen percent (15%) of the sales.

Your organization contends that the proceeds from Woodmere China should not be categorized as a political contribution. You compare the sale of the china to the sale of t-shirts or caps. However, you explain that unlike low end priced products, the china was one-of-a-kind inventory, which was far too expensive to make available for “cash and carry” presentation at the event. You request an advisory opinion to resolve this matter. You ask if, under any circumstances, the Lincoln Club may retain the funds it received from Woodmere China, Inc.

The short answer to your question is no. For the reasons explained below, the Lincoln Club may not retain the funds it received from Woodmere China, Inc., without remaining in continued violation of the provisions of KRS Chapter 121.

KRS 121.015(3) defines a committee to include a permanent committee,

which means a group of individuals, including an association, committee or organization ... which is established as, or intended to be, a permanent organization having as its primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year.

As distinguished from a “contributing organization,” defined under KRS 121.015(4), which you suggest as an alternate organizational form, a permanent committee solicits and receives funds from persons outside its own membership and has a primary purpose of supporting candidates for public office. Although the Lincoln Club has not, in fact, made any contributions to candidates, it does solicit and receive funds from outside its membership and has as a primary purpose the support of candidates. Further, during the period of the transaction through the present, the Lincoln Club was in fact registered as a permanent committee.

Strictly speaking, the Lincoln Club’s registration as a permanent committee does not matter, since the express language of the relevant statutes prohibits a corporate contribution under the facts presented by your letters. KRS 121.150(22) provides that

[n]o candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf shall knowingly accept a contribution from a corporation, directly or indirectly.

(Emphasis added.) Conversely, KRS 121.025 and KRS 121.035 prohibit a corporation from giving anything of value, directly, indirectly or through an agent or other person, to a candidate or a political organization that supports candidates. Under KRS 121.015(6), contribution includes “any ...[p]ayment, distribution, loan, deposit or gift of money or other thing of value ... to a committee, or contributing organization.”

The definition of contribution would include funds received either by the sale of items or by the receipt of a portion of the proceeds of the sale of items. Such a transaction between a permanent committee and an individual wishing to contribute to the permanent committee would be acceptable, provided the total contributions to permanent committees by the individual did not exceed the contribution limit provided under KRS 121.150(10). (See, e.g., KREF Advisory Opinion 2001-003, opining that the entire purchase price of a fundraiser ticket would constitute a contribution to an executive committee, and would be permitted only if it fell within the contribution limit.)

However, a contribution from a corporation is expressly prohibited. Therefore, the Lincoln Club's receipt of fifteen percent (15%) of the proceeds of the sale of Woodmere China from Woodmere China, Inc. constitutes an unlawful contribution under KRS 121.150(22).

Further, such a receipt, unlike the sale of t-shirts, for example, violates the purpose of public disclosure required under KRS Chapter 121. Instead of directly contributing to the permanent committee, purchasers have instead elected to purchase items from a corporation with the knowledge that the corporation will provide a percentage of the sales to the permanent committee. However, the records of the transactions are not reported. Specifically, the Lincoln Club reported only its receipt from Woodmere China, Inc. and a list of the pieces sold. Information regarding the actual purchasers was not provided under the circumstances of the transaction.

This opinion reflects the Registry's consideration of the specific transaction posed by your letter. The Registry also concurs in the staff's recommendation that the funds accepted from Woodmere China, Inc. by your organization be refunded. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

Enclosure

RFC/jh

Cc: Registry Members

Sarah M. Jackson
Executive Director